



February 17, 2009

HOUSE BILL No. 1062

DIGEST OF HB 1062 (Updated February 11, 2009 2:59 pm - DI 107)

Citations Affected: IC 34-23; noncode.

Synopsis: Wrongful death statute of limitations. Requires a court to waive the two year statute of limitations for commencing a wrongful death action if the personal representative of the decedent: (1) petitions the court for a waiver within two years after the death of the decedent; and (2) establishes at a hearing there is probable cause to believe that the decedent was the victim of murder.

Effective: July 1, 2009.

Niezgodski, Koch, Welch

January 8, 2009, read first time and referred to Committee on Judiciary.
February 17, 2009, reported — Do Pass.

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HB 1062—LS 6296/DI 69+



February 17, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1062

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-23-1-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. When the death of
3 one is caused by the wrongful act or omission of another, the personal
4 representative of the former may maintain an action therefor against the
5 latter, if the former might have maintained an action had he or she, as
6 the case may be, lived, against the latter for an injury for the same act
7 or omission. **Except as provided in section 3 of this chapter**, when
8 the death of one is caused by the wrongful act or omission of another,
9 the action shall be commenced by the personal representative of the
10 decedent within two (2) years, and the damages shall be in such an
11 amount as may be determined by the court or jury, including, but not
12 limited to, reasonable medical, hospital, funeral, and burial expenses,
13 and lost earnings of such deceased person resulting from said wrongful
14 act or omission. That part of the damages which is recovered for
15 reasonable medical, hospital, funeral, and burial expense shall inure to
16 the exclusive benefit of the decedent's estate for the payment thereof.
17 The remainder of the damages, if any, shall, subject to the provisions

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of this article, inure to the exclusive benefit of the widow or widower, as the case may be, and to the dependent children, if any, or dependent next of kin, to be distributed in the same manner as the personal property of the deceased. If such decedent depart this life leaving no such widow or widower, or dependent children or dependent next of kin, surviving her or him, the damages inure to the exclusive benefit of the person or persons furnishing necessary and reasonable hospitalization or hospital services in connection with the last illness or injury of the decedent, performing necessary and reasonable medical or surgical services in connection with the last illness or injury of the decedent, to a funeral director or funeral home for the necessary and reasonable funeral and burial expenses, and to the personal representative, as such, for the necessary and reasonable costs and expenses of administering the estate and prosecuting or compromising the action, including a reasonable attorney's fee, and in case of a death under such circumstances, and when such decedent leaves no such widow, widower, or dependent children, or dependent next of kin, surviving him or her, the measure of damages to be recovered shall be the total of the necessary and reasonable value of such hospitalization or hospital service, medical and surgical services, such funeral expenses, and such costs and expenses of administration, including attorney fees.

SECTION 2. IC 34-23-1-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3. (a) The personal representative of a decedent may petition a court that would have jurisdiction in an action brought under section 1 of this chapter to waive the two (2) year time limit for commencing the action.**

(b) A petition described in subsection (a) must be filed with the court not later than two (2) years after the death of the decedent is allegedly caused by the wrongful act or omission.

(c) After receiving a petition under subsection (a), the court shall:

- (1) notify all persons that would be parties to the action commenced under section 1 of this chapter; and**
- (2) conduct a hearing concerning the petition.**

(d) If at a hearing held under subsection (c) the personal representative establishes there is probable cause to believe that the decedent was the victim of murder under IC 35-42-1-1, the court shall:

- (1) waive the two (2) year time limit for commencing the action described in section 1 of this chapter; and**

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1 (2) allow the personal representative to commence an action
2 under section 1 of this chapter at any time.

3 (e) A court shall waive the two (2) year time limit and allow the
4 personal representative to commence an action at any time under
5 subsection (d) regardless of whether the person whose wrongful act
6 or omission allegedly caused the death of the decedent:

7 (1) is prosecuted for;

8 (2) is convicted of;

9 (3) is found not guilty of; or

10 (4) pleads guilty to;
11 committing murder.

12 SECTION 3. [EFFECTIVE JULY 1, 2009] IC 34-23-1-3, as added
13 by this act, applies only to a cause of action that accrues after June
14 30, 2009.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1062, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

LAWSON L, Chair

Committee Vote: yeas 6, nays 3.

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